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MEETING OF THE STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

FOURTEENTH MEETING

SUMMARY RECORD OF THE 19th MEETING

Held at Headquarters, New York,
on Thursday, 8 September 1994, at 10 a.m.

Temporary Chairman: Mr. CORELL
(Representative of the Secretary-General)

Chairman: Mr. PEERTHUM (Mauritius)

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The meeting was called to order at 10.30 a.m.

OPENING OF THE MEETING BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

1. The TEMPORARY CHAIRMAN informed the Committee that, since the previous meeting, an additional 3 States - Georgia, the former Yugoslav Republic of Macedonia, and Malawi - had become Parties to the Covenant, bringing the total to 127. During the same period, 2 more States had become Parties to the Optional Protocol, bringing the total to 76, and 4 additional States had acceded to or ratified the Second Optional Protocol, bringing the total number of States Parties to 23. The significant increase in adherence to those and other United Nations human rights treaty bodies reflected a growing awareness in the world of the importance of human rights and the need to strengthen and extend the observance of international legal norms still further.

2. The Committee had continued to discharge its responsibilities under the Covenant competently and efficiently. It had examined 29 reports submitted to it by States Parties under article 40 of the Covenant. It had, however, faced growing problems with respect to the submission of initial and periodic reports. At its previous session it had noted, for instance, that a total of 93 reports - 20 initial, 23 second periodic, 37 third periodic and 13 fourth periodic reports, involving a total of 75 States Parties - were outstanding, and had pointed out that that trend seriously undermined the objectives of the Covenant and hampered the ability of the Committee to monitor the implementation of the Covenant's provisions in the State Party concerned.

3. In response to developments that had seriously affected the enjoyment of human rights in certain States Parties, during the period under review the Committee had adopted decisions requesting the States concerned to submit special reports on an urgent basis. Such decisions had been taken in respect of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro), Angola and Burundi.

4. The Committee had adopted general comments on articles 18 and 27 of the Covenant and had undertaken preparatory work on two general comments that would address issues relating to reservations to the Covenant of the Optional Protocols and to article 25 of the Covenant. It had also adopted a considerable number of final decisions under the first Optional Protocol. It was gratifying that an increasing number of high-level judicial instances within States Parties had begun to refer to the Committee's decisions in their judgements. The Committee had also devoted particular attention to the procedure under which it monitored how its decisions under the Optional Protocol were followed up and had adopted several measures designed to improve the effectiveness of the follow-up procedure.

5. Mr. MISIC (Bosnia and Herzegovina) proposed that the States Parties should decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should not participate in the work of the meeting of the States Parties to the Covenant.

6. Mr. DJORDJEVIĆ (Yugoslavia), speaking on a point of order, said that the proposal of Bosnia and Herzegovina was entirely inconsistent with the letter and the spirit of the Covenant; it was legally unfounded and politically motivated. If adopted, it would entail discrimination against one of the States Parties to the Covenant, might set a dangerous precedent for the status of other Parties to the Covenant, and could create obstacles for its implementation. He therefore moved, under rule 74 of the rules of procedure of the General Assembly, that no action should be taken on the proposal, and asked that his motion be put to a vote. Furthermore, under rule 87 (a) of the rules of procedure of the General Assembly, he suggested that a roll-call vote should be taken on all proposals before the meeting.

7. The TEMPORARY CHAIRMAN invited the representatives of the States Parties to speak on the Yugoslav motion.

8. Mr. BRAHA (Albania) said that his delegation supported the proposal of Bosnia and Herzegovina. The so-called Federal Republic of Yugoslavia could not automatically be a party to the Covenant because it did not meet the necessary criteria. Since it had not been accepted as the automatic successor to the legal personality of the former Socialist Federal Republic of Yugoslavia, it must accede to the Covenant in the same manner as the other former Yugoslav republics. In addition, his country strongly condemned the ethnic cleansing and other grave violations of human rights in the former Yugoslavia, committed through Serb aggression against other peoples, such as the situation in Kosovo where the 2 million Albanians were being brutally oppressed. The situation in Kosovo was serious and fraught with danger for regional peace and security.

9. Mr. DJORDJEVIĆ (Yugoslavia), speaking on a point of order, requested the Temporary Chairman to remind representatives that the Committee was debating procedural motions and that they should refrain from making substantive comments and accusations against his country.

10. Mr. SY (Senegal) said his delegation strongly supported the proposal of Bosnia and Herzegovina. The Committee was fully aware of the reasons for it; if the international community was going to behave consistently, action should be taken accordingly.

11. Mr. MATEŠIĆ (Croatia) said his delegation supported the proposal of Bosnia and Herzegovina, because the Federal Republic of Yugoslavia (Serbia and Montenegro) had not notified the Secretary-General, in his capacity as the depository of international treaties, of its accession to the Covenant. That State, therefore, should not be allowed to participate in the meetings of States parties. His delegation would vote against the Yugoslav motion and he invited other States Parties to do likewise.

12. The TEMPORARY CHAIRMAN invited the States Parties to vote on the Yugoslav motion that no action should be taken on the proposal by Bosnia and Herzegovina.

13. The vote was taken by roll-call.

In favour: Yugoslavia.

Against: Afghanistan, Albania, Algeria, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Cape Verde, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Guinea, Hungary, Iceland, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Senegal, Slovakia, Slovenia, Spain, Sudan, Suriname, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yemen.

Abstaining: Argentina, Bolivia, Brazil, Cambodia, Cameroon, Dominica, Ecuador, El Salvador, Equatorial Guinea, Ethiopia, Gambia, Grenada, India, Kenya, Lesotho, Malawi, Nepal, Nigeria, Peru, Romania, Sri Lanka, Togo, Uruguay, Zambia, Zimbabwe.

14. The motion by Yugoslavia to take no action on the proposal by Bosnia and Herzegovina was rejected by 68 votes to 1 with 25 abstentions.*

15. Mr. DJORDJEVIĆ (Yugoslavia), speaking on a point of order, said that his delegation objected to the attempts by certain States Parties to the Covenant to challenge the participation of his delegation in the current meeting. Such actions were unfounded and inconsistent with the letter and spirit of the Covenant and the rules of procedure for the meeting. Various arguments advanced by some delegations in an attempt to invoke General Assembly resolution 47/1 and the issues of succession and continuity of the former Socialist Federal Republic of Yugoslavia, as a pretext for their action, were unwarranted and falsely construed. The Socialist Federal Republic of Yugoslavia had become a State Party to the Covenant on 23 March 1976. In a declaration dated 27 April 1992, the Federal Republic of Yugoslavia had clearly stated that it would continue the State, international, legal and political personality of the former Socialist Federal Republic of Yugoslavia and that it would honour all international commitments undertaken by that State, including those arising from international human rights instruments. Such a position was unequivocally supported by the rules of international customary law as codified in the Vienna Convention on Succession of States in Respect of Treaties (arts. 34 and 35).

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* The following States Parties did not wish to participate in the voting: Armenia, Barbados, Benin, Burundi, Congo, Côte d'Ivoire, Cyprus, Democratic People's Republic of Korea, Dominican Republic, Gabon, Guyana, Haiti, Iraq, Jamaica, Libyan Arab Jamahiriya, Madagascar, Mexico, Mongolia, Russian Federation, Saint Vincent and the Grenadines, San Marino, Seychelles, United Republic of Tanzania.

16. The status of the Federal Republic of Yugoslavia as a party to treaties was not in any way affected by General Assembly resolution 47/1, which pertained solely to non-participation in the General Assembly. According to the opinion of the United Nations Legal Counsel (A/47/485) the resolution did not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies. According to another opinion of the Legal Office of the Secretariat, dated 16 November 1993, the status of Yugoslavia as a party to treaties was not affected by the adoption of General Assembly resolution 47/1. His delegation had been officially invited to take part in the current meeting, for which it had duly submitted full powers. The meeting was not an appropriate forum for the discussion either of issues arising from succession to the former Socialist Federal Republic of Yugoslavia or of the status of the Federal Republic of Yugoslavia in the United Nations. Those issues were under consideration within the International Conference on the Former Yugoslavia and in the United Nations.

17. The Federal Republic of Yugoslavia had clearly expressed its readiness and resolve to honour all its duties and obligations arising from the International Covenant on Civil and Political Rights. In full compliance with the decision of the Human Rights Committee, the Government of the Federal Republic of Yugoslavia had submitted its report, which had been considered together with the reports of other States Parties at the forty-sixth session of the Human Rights Committee in Geneva from 19 October to 6 November 1992. Therefore, the least required from his country as a State Party to the Covenant was to participate in meetings of States Parties on civil and political rights.

18. The denial of the legitimate right of the Federal Republic of Yugoslavia to participate in the meeting of the States Parties would at the same time imply the suspension of its obligations under the Covenant. That would mean that Yugoslavia would no longer be obliged to implement the provisions of the Covenant, and that would result in suspension of the activities in cooperation of the Federal Republic of Yugoslavia with the Human Rights Committee. Moreover, the Committee would not be in a position to request the Federal Republic of Yugoslavia to undertake any activity under the Covenant.

19. He reminded States Parties that the Covenant belonged to a special category of treaties whose beneficiaries were not States but individual human beings. That was exactly the reason used by the International Court of Justice in the Barcelona Traction case when it had ruled that international human rights instruments were valid erga omnes and should be accorded privileged status, in other words, they should be universally accepted. Accordingly, his delegation, which was simply requesting to continue to honour its commitments under the Covenant, strongly opposed any kind of pressure or the imposition of a majority rule by any group of States. To accept such a politically motivated approach would be disastrous for the cooperation of States Parties and the future implementation of the Covenant. It could only create chaos in international relations and lead to blatant disregard of the basic principles of international law and the Charter of the United Nations concerning universality and the sovereign equality of States. The proposal of those States which challenged the participation of the Federal Republic of Yugoslavia contained nothing that justified their attempts to undermine the aforementioned universal values.

20. His delegation would therefore cast a negative vote on the proposal to prevent the Federal Republic of Yugoslavia, a State Party to the Covenant, from participating in the current meeting.

21. Mr. MATEŠIĆ (Croatia), speaking in explanation of vote before the vote on the proposal of Bosnia and Herzegovina, said that his delegation objected to the participation in the current meeting of a delegation from the Federal Republic of Yugoslavia (Serbia and Montenegro). The Federal Republic of Yugoslavia, which consisted of the former Yugoslav republics of Serbia and Montenegro, had stated that it was a State Party to the Covenant because it supposedly represented a continuation of the State, international, legal and political personality of the former Socialist Federal Republic of Yugoslavia, i.e. that it represented the predecessor State rather than one of the successor states of the former Yugoslavia. The Federal Republic of Yugoslavia (Serbia and Montenegro) therefore desired to participate in the meeting (and other similar meetings), because it wished to create a precedent by which it would later seek to prove that it was the sole legitimate successor to the former Socialist Federal Republic of Yugoslavia.

22. The claims of the Federal Republic of Yugoslavia (Serbia and Montenegro) were contrary to the position which had been taken by the international community. The Arbitration Commission of the International Conference on the Former Yugoslavia, in its opinions Nos. 8, 9 and 10 of 4 July 1992, had stated that the process of dissolution of the Socialist Federal Republic of Yugoslavia was complete and that the Socialist Federal Republic of Yugoslavia no longer existed. The Arbitration Commission had also stated that the Federal Republic of Yugoslavia (Serbia and Montenegro) was a new State which could not be considered the sole successor to the Socialist Federal Republic of Yugoslavia.

23. Furthermore, the Security Council had adopted resolution 777 (1992) which stated that the State formerly known as the Socialist Federal Republic of Yugoslavia had ceased to exist and that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations. The General Assembly had reiterated that position in its resolution 47/1.

24. While from a technical point of view the aforementioned resolutions had only made a decision as to the membership of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the United Nations, the underlying reason for the decisions was the same as that for the decision of the Arbitration Commission, namely, that the Socialist Federal Republic of Yugoslavia had ceased to exist. No State could represent the continuation of the legal and State personality of a State which had been declared non-existent by the highest international bodies - the Security Council and the General Assembly.

25. While meetings of States Parties to various international human rights instruments were not specifically referred to in the aforementioned resolutions, it was natural to expect that the States Parties would adhere to the position expressed by the Security Council and General Assembly resolutions and should not act in such a way as to give the appearance that the Federal Republic of Yugoslavia (Serbia and Montenegro) was the automatic successor to the Socialist Federal Republic of Yugoslavia.

26. It was understandable that the States Parties to the Covenant wanted the Federal Republic of Yugoslavia (Serbia and Montenegro) to feel bound by its terms; however, they should not act in a manner which was in conflict with positions taken by the Security Council and the General Assembly.

27. As one of the successor States of the former Yugoslavia, the Federal Republic of Yugoslavia (Serbia and Montenegro) should act as other successor States had done. It should notify the Secretary-General, in his capacity as the depository of international treaties, of its succession to the Covenant. Until it had done so, it should not be allowed to participate in the meetings of States Parties to the Covenant.

28. His delegation would therefore vote in favour of the motion proposed by Bosnia and Herzegovina.

29. At the request of the representative of Yugoslavia, a vote was taken by roll-call on the proposal by Bosnia and Herzegovina.

In favour: Afghanistan, Albania, Algeria, Australia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Cape Verde, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Gambia, Germany, Guinea, Hungary, Iceland, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Senegal, Slovakia, Slovenia, Spain, Sudan, Suriname, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen.

Against: Yugoslavia.

Abstaining: Argentina, Belarus, Bolivia, Brazil, Cambodia, Cameroon, Cyprus, Dominica, Ecuador, El Salvador, Estonia, Ethiopia, Georgia, Grenada, Guatemala, India, Kenya, Lesotho, Malawi, Nepal, Nigeria, Peru, Sri Lanka, Togo, Uruguay, Venezuela, Zambia, Zimbabwe.

30. The proposal was adopted by 67 votes to 1, with 28 abstentions.*

31. Mr. Djordjević (Yugoslavia) withdrew.

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* The following States Parties did not wish to participate in the voting: Armenia, Barbados, Benin, Burundi, Congo, Côte d'Ivoire, Democratic People's Republic of Korea, Dominican Republic, Equatorial Guinea, Gabon, Guyana, Haiti, Iraq, Jamaica, Libyan Arab Jamahiriya, Madagascar, Mexico, Mongolia, Russian Federation, Saint Vincent and the Grenadines, San Marino, Seychelles, United Republic of Tanzania.

32. Ms. TOMIČ (Slovenia), speaking in explanation of vote, said that there were two issues involved. First, the international community had a legitimate right to expect that the regime of human rights protection based on the Covenant should, in the event of the extinction of a State Party, continue to apply uninterruptedly to its successor States. Each successor State should make that clear by means of notification of succession. Second, the Federal Republic of Yugoslavia (Serbia and Montenegro) continued to assert the automatic continuity of the legal personality of the former Socialist Federal Republic of Yugoslavia, a State that had ceased to exist. That assertion had been disputed by the other successor States and by a majority of the States Members of the United Nations. In a clear case of politicization of human rights, the Federal Republic of Yugoslavia (Serbia and Montenegro) was attempting to use the international treaties to confuse the issue of the continuity of the human rights protection regime with that of the continuity of the legal personality of a State that was extinct. Such an attempt should be firmly rejected and Slovenia had therefore decided to support the proposal of Bosnia and Herzegovina.

33. Mr. MUCH (Germany), speaking in explanation of vote on behalf of the States members of the European Union that were Parties to the Covenant and on behalf of Austria, Finland, Norway and Sweden, said that the vote of the delegations concerned was without prejudice to their position regarding the status of the Federal Republic of Yugoslavia (Serbia and Montenegro) vis-à-vis the Covenant, namely that it should abide by the obligations ensuing therefrom.

34. Mr. KUEHL (United States of America), speaking in explanation of vote, said that the position of his Government was that the Federal Republic of Yugoslavia (Serbia and Montenegro) was neither the continuation of the Socialist Federal Republic of Yugoslavia nor the sole successor State and was therefore not entitled to participate in meetings of the States Parties to the Covenant in either of those capacities. However, it continued to be bound by the terms of the Covenant as one of the successor States.

ELECTION OF THE CHAIRMAN

35. Mr. YOO (Republic of Korea), supported by Mr. DANGUE REWAKA (Gabon), nominated Mr. Peerthum (Mauritius) to serve as Chairman.

36. Mr. Peerthum (Mauritius) was elected Chairman by acclamation.

37. Mr. Peerthum (Mauritius) took the Chair.

ADOPTION OF THE AGENDA (CCPR/SP/42)

38. The agenda was adopted.

CREDENTIALS OF REPRESENTATIVES (CCPR/SP/2/Rev.1)

39. The CHAIRMAN, after drawing attention to rule 2 of the rules of procedure of the meeting (CCPR/SP/2/Rev.1), said he had been informed that the Secretary-General had yet to receive proper credentials from a number of States Parties represented at the meeting. While urging representatives to ensure that their credentials were submitted to the Secretary-General as soon as possible he

suggested that, in accordance with rule 3, the representatives of the States Parties concerned should be entitled provisionally to participate in the meeting.

40. It was so decided.

ELECTION OF OTHER OFFICERS

41. The CHAIRMAN said that, under rule 4 of the rules of procedure, the meeting was to elect one to four Vice-Chairmen from among the representatives of the States Parties. He had been informed that Mr. Pashovski (Bulgaria), Mr. Seyed Hossein-Rezvani (Islamic Republic of Iran), Mr. Sleeuwagen (Belgium) and Mr. Beliz (Panama) had been nominated to serve as Vice-Chairmen.

42. Mr. Pashovski (Bulgaria), Mr. Seyed Hossein-Rezvani (Islamic Republic of Iran), Mr. Sleeuwagen (Belgium) and Mr. Beliz (Panama) were elected Vice-Chairmen by acclamation.

ELECTION, IN ACCORDANCE WITH ARTICLES 28 TO 32 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, OF NINE MEMBERS OF THE HUMAN RIGHTS COMMITTEE TO REPLACE THOSE WHOSE TERMS WERE DUE TO EXPIRE ON 31 DECEMBER 1994 (CCPR/SP/43 and Add.1-8)

43. The CHAIRMAN drew attention to documents CCPR/SP/43 and Add.1 to 8, which contained a list of the candidates nominated by States Parties and their biographical data. As Mr. Maidagi (Niger) and Mr. Mohaghegh Damad (Islamic Republic of Iran) had withdrawn, there were 29 candidates for the nine vacancies to be filled. He drew the attention of States Parties to the provisions of articles 30, 31 and 32 of the Covenant.

44. At the invitation of the Chairman, Ms. Buck (Canada) and Ms. Gandara (Guatemala) acted as tellers.

45. A vote was taken by secret ballot.

Number of ballot papers:	123
Number of invalid ballots:	0
Number of valid ballots:	123
Abstentions:	0
Number of representatives voting:	123
Required majority:	62

Number of votes obtained:

Mr. Agurtsou (Belarus)	25
Mr. Al-Witri (Iraq)	7
Mr. Ando (Japan)	92
Mr. Assouma (Togo)	15
Mr. Bhagwati (India)	64
Mr. Bocar (Mali)	5
Mr. Buergenthal (United States of America)	80
Mrs. Chanet (France)	66
Mr. Diawara (Guinea)	17
Mrs. Drammeh (Gambia)	9
Mr. El Shafei (Egypt)	56
Mr. Ennaceur (Tunisia)	39
Mr. Flinterman (Netherlands)	43
Mr. Hafiana (Libyan Arab Jamahiriya)	14
Mr. Herndl (Austria)	44
Mr. Keké (Benin)	10
Mr. Klein (Germany)	71
Mr. Kretzmer (Israel)	68
Mr. Kumo (Nigeria)	17
Mr. Wollo (Congo)	4
Mr. Maema (Lesotho)	5
Mrs. Medina Quiroga (Chile)	88
Mr. Mohamed (Sudan)	12
Mr. Ndiaye (Senegal)	43
Mrs. Bangui (Congo)	4
Mr. Patel (Zimbabwe)	29
Mr. Prado Vallejo (Ecuador)	48
Mr. Sadi (Jordan)	42
Mr. Scheinin (Finland)	46

46. Having obtained the required majority, Mr. Ando (Japan), Mr. Bhagwati (India), Mr. Buergenthal (United States of America), Mrs. Chanet (France), Mr. Klein (Germany), Mr. Kretzmer (Israel) and Mrs. Medina Quiroga (Chile) were elected members of the Human Rights Committee for a four-year term beginning on 1 January 1995.

47. The CHAIRMAN said that as fewer than nine candidates had obtained the required majority, a second restricted ballot would be required in accordance with rule 15 of the rules of procedure. In accordance with that rule, Mr. El Shafei (Egypt), Mr. Prado Vallejo (Ecuador), Mr. Scheinin (Finland) and Mr. Herndl (Austria) were eligible for election. Voting would be resumed at the following meeting.

The meeting rose at 1.25 p.m.